

N.D.A.G. Letter to Larson (June 23, 1989)

June 23, 1989

Honorable Rod Larson
State Representative
District 13
36 Park Drive
West Fargo, ND 58078

Dear Representative Larson:

Thank you for your June 2, 1989, letter concerning the applicability of the public records law to a law enforcement record concerning a juvenile.

North Dakota's public records law provides that all records of public or governmental bodies shall be public records open and accessible for inspection during reasonable office hours "[e]xcept as otherwise specifically provided by law." N.D.C.C. § 44-04-18. Currently, there is no statute discussing the applicability of the public records law to law enforcement records in general. However, the 1989 Legislative Assembly enacted Senate Bill No. 2222 which provides for a statutory exception to the open records law for active law enforcement criminal intelligence and investigative information. Senate Bill No. 2222 will become effective on July 27, 1989.

Although a statute generally discussing the applicability of the public records law to law enforcement records has not yet become effective in this state, there is already a statute in effect a statute discussing the disclosure of law enforcement records concerning children.

N.D.C.C. § 27-20-52 provides that all law enforcement records and files "concerning a child" shall be kept separate from the records and files of arrests of adults. Furthermore, the statute states that these records shall not be open to public inspection or their contents disclosed to the public unless a charge of delinquency is transferred for criminal prosecution, the interests of national security require public disclosure, or the court otherwise orders disclosure in the interest of the child.

The statute also provides for inspection of the records and files by the following individuals or entities:

1. A juvenile court having a child before it in any proceeding.
2. Counsel for a party to a juvenile proceeding.
3. The officers of a public institution or agency to whom a child is committed.

4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties.
5. A court in which the child has been convicted of a criminal offense or a parole or pardon board in considering the child's parole or discharge.

A "child" is defined as an individual who is under the age of eighteen years and is not married or a member of the armed services or an individual who is over the age of eighteen years and has committed an act of delinquency while a child. N.D.C.C. § 27-20-02(1).

According to your letter, the record in question is a death report from the Cass County Sheriff's Department concerning a juvenile. The Sheriff's Department has considered the matter closed and has indicated there is no ongoing investigation of this case. However, the Cass County State's Attorney has informed this office that this death report is a law enforcement record or file. If the record or file concerns an individual who satisfies the definition of a child, then that record or file may not be open to public inspection or its contents disclosed to the public except as provided by statute. None of the provisions described within N.D.C.C. § 27-20-52 would appear to allow disclosure of this record or file in this case. The only possible option is a petition to a court requesting the release of the record as being in the interest of the child.

Assuming the record in question constitutes a law enforcement record or file concerning a child, then the provisions of N.D.C.C. § 27-20-52 prevent its disclosure unless any of the exemptions identified within the statute are applicable. The lack of an ongoing investigation is not relevant to the statutory requirement that the records not be disclosed to the public.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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